Adult Social Care
Community DOLS Process

This guidance has been produced to support practitioners working with individuals who live in the community and lack capacity to consent to their support, where they may be deprived of their liberty.

- The Human Rights Act 1998 ensures that everybody has the right to liberty (Article 5).
- Sometimes restrictions on a person’s liberty and freedom are necessary in order to keep the person safe.
- These restrictions are known as a deprivation of liberty – deprivations can occur in community settings (e.g. supported living) where the Acid Test is met.

What are Community Deprivation of Liberty Safeguards (DOLS)?

- A person living within the community who lacks capacity to make decisions for themselves about their support and accommodation.
- The individual will be receiving a formal package of support.
- The Acid Test is met. This is a twofold test which determines:
  - Is the person free to leave?
  - Is the person subject to complete or continuous supervision and control?
- Where the Acid Test is met a person is considered to be being deprived of their liberty

   *It does not matter why a deprivation might be happening and whether it is really positive for the person, the facts are simply the facts.*

What constitutes a deprivation of liberty?

The Acid Test tells us that a person is being deprived of their liberty because their freedom is restricted. We need to consider any further restrictions placed on the person within their daily living arrangements as these may also be depriving the person of their liberty.

For every person who has restrictions and deprivations within their support, we must always consider:

- Is this the least restrictive option?
- Is this deprivation in the person’s best interests?

   *If we fail to apply this criteria we are at risk of acting unlawfully*
What does this mean in practice?

Just because the term “deprivation of liberty” is used it doesn’t mean that someone is doing something wrong. It means that the situation needs someone independent to look at it to ensure the person’s rights are being protected and to confirm that things should continue as they are.

If the person is in a care home or hospital, it is possible for this to be done through the DOLS process. If they are anywhere else (e.g. in a community setting), it is necessary for a judge of the Court of Protection to look at the position.

Having someone independent to look over the care arrangements means a fresh eye can see whether there are less restrictive ways of providing the care. In some cases the actions taking place may not be in the person’s best interests and the independent oversight will identify this.

Applying to the Court of Protection

If the Acid Test is met and the person cannot consent to their support because they lack mental capacity, the deprivation will need to be reviewed and approved, in order to allow it to continue. This is done through an application to the Court of Protection.

- This will allow the situation and the deprivations to be scrutinised independently by a judge within the Court process to check that the person’s rights are being protected.

Remember: Assessing whether a deprivation of liberty has taken place is an essential right as no one should ever be restricted to an extent greater than is necessary and proportionate to the risks involved.
Legal Gateway Panel

**Purpose**

The Legal Gateway Panel will meet on a monthly basis to discuss referrals to Legal Services regarding deprivation of liberty in domestic settings, S. 21A challenges and Court of Protection Welfare Applications.

This is the accepted forum for discussing such referrals although, in the event that an adult requires an urgent decision prior to the next scheduled Panel meeting, the Service Delivery Manager may make decisions with the benefit of legal advice from Legal Services.

The purpose of the Legal Gateway is to consider all referrals, and make a decision as to whether to proceed to the Court of Protection with any applications.

**Attendance at the Legal Gateway Panel Meetings:**

Meetings will be chaired on a monthly basis by the Service Delivery Manager for Community Social Work and Safeguarding. Also required will be the Professional Lead for DoL’s, relevant Team Leaders, and Oliver Nicholas, ASC Solicitor. If any of the above is not available to attend the scheduled meeting, they must send a representative.

**Team Leader’s decision to make a Community DoL’s referral**

The decision to refer a community DoL’s case should be made by a Team Leader following a discussion with the relevant Social Worker or Senior Social Worker. Referrals for a Community DoLS should be sent by the Social Worker to the DoLS Team on the appropriate referral form. Responsibility for the management of the case will remain with the Social Worker/Senior Social Worker and Team Leader through normal supervision and case discussion. The individual's electronic records will be updated to indicate that a referral has been made to the DoL’s Team.

The DoL’s Team will be responsible for prioritising Community DoL’s in accordance with the prioritisation tool (Appendix 1).

The Professional Lead for DoL’s will forward LAS identification of those deemed high priority to Kim Pretty who will table for discussion at the Legal Gateway Panel meeting and decision regarding whether the application is to proceed to the Court of Protection.

**Discussions at legal gateway should be recorded on the individuals LAS record.**

**Team Leaders decision to refer a welfare application to the Legal Gateway panel**

The decision to refer a welfare application to the Legal Gateway may be made by a Team Leader following a discussion with the relevant Social Worker or Senior Social Worker.

Responsibility for the management of the case will remain with the Social Worker/Senior Social Worker and Team Leader through normal supervision and case discussion. The individuals LAS record will be updated to indicate that a referral has been made to the Legal Gateway Panel.

The Social Worker will forward the individuals LAS identification to Kim Pretty who will table for discussion at the Legal Gateway Panel meeting.

The Team Leader is responsible for presenting the case to the panel for discussion, and decision regarding whether the application is to proceed to the Court of Protection.

**Discussions at legal gateway should be recorded on the individuals LAS record.**
**Information required to be presented at the Legal Gateway Panel meetings**

To allow the Panel to make an informed decision regarding each case, Team Leaders must come prepared to verbally present a full background to the case and the rationale for the proposed legal application.

**Issues to be considered by the Legal Gateway Panel**

Social work care planning should have been undertaken within the appropriate Locality prior to a referral to the Legal Gateway Panel. All the following points must have been considered:

1. Relevant assessments have been completed by the appropriate professional.
2. Capacity assessments should not be more than 3 months old.
3. The adult’s lack of capacity to make the relevant decision must have been established.
4. Any deprivation of liberty is attributable to the Council. Where an adult is funded through CHC, then the appropriate CCG should bring the application or be named as a party.
5. All relevant parties have been properly consulted and their views taken into account when determining an adult’s best interests.
6. Consideration regarding appointment of an IMCA for proposed welfare applications or an appropriate family member is acting as a Rule 3A Rep in COPDOL 10 cases.
7. Evidence has been provided that, in the case of restraint being used, the restraint is proportionate to the likelihood and seriousness of harm.
8. That a less restrictive option has been considered that will meet need. If it has not been considered, the reason for this.
9. The quality of evidence available and whether or not further evidence is required.
10. In welfare cases, whether proceedings are necessary and there is a serious case requiring the court’s intervention, such as the adult or a family member disputing a best interest’s decision regarding residence, care or contact. The only circumstances in which an application to the COP will always be required is if there is a deprivation of liberty in the community which cannot be authorised any other way.

This list is not exhaustive and additional information may be requested or relevant depending on the circumstances.

**Outcomes of the Legal Gateway Panel meetings**

Having considered the information available to the Panel and the legal position having been discussed, the panel will decide whether to:

a) Accept or decline the referral with feedback to be provided on the appropriate Outcomes Form.

b) Defer the referral, subject to further information being provided at the next Legal Gateway Panel meeting, or, alternatively, to be presented to the Chair outside the terms of the Legal Gateway Panel should the matter be urgent.

**Recording of a decision by the Legal Gateway Panel**

A written decision will be provided for each case by the Chair of the meeting on the appropriate Outcomes Form. This will set out the final decision of the Chair with a clear rationale for that decision, and will be circulated to all Panel members within 7 days of the Panel meeting. These
notes are legally privileged and should not be made available to any third party or other parties in potential proceedings.

The Panel decision will be incorporated into the individuals LAS record.

**Panel decision to make application to the Court of Protection**

**Community DoLS**

For application regarding Deprivation of Liberties in a domestic setting, where there is no objection to the placement, the following documents will be required:

- COPDOL 11 Application Form
- COPDOL 11 Checklist
- COP 3 Mental Capacity Assessment
- Mental Health Assessment
- Best interests Decision
- Care/Support Plan
- Additional information

Guidance regarding the application process can be found at this link:


**Welfare application under S. 16 MCA**

The following documents will be required:

- COP 24 witness statement from the relevant Social Worker
- COP 3 Mental Capacity Assessment

**Guidance on completion of COP forms**

**COPDOL11 Form**

- Completed by the Social Worker.
- The form is made up of 3 Annex’s that form the evidence. The annex’s need to be signed and dated by the Social Worker completing the form.
- In Annex B you need to consult with relevant people involved in the person’s life and care and support, about the application being made to the court. This can be family, medical staff, placement staff etc etc.
- As part of the consultation you must inform them of the information contained in paragraph 40 of Practice Direction 11A of the Court of Protection Rule 2017.
- Please make sure you obtain the full contact details of the people consulted.
- At page 21 you need to state if there would be anyone suitable to act as the person’s representative Rule 1.2 representative as per the Court of Protection Rules 2017.

This is someone that needs to be the eyes and ears on the ground. Essentially they have to be willing to raise an issue about the care and support that the person is receiving.
Whomever is chosen needs to be provided with a copy of the **Judgement in the case of Re VE**. Mr Justice Charles sets out what is expected of the representative. You will note there is reference to a **rule 3A representative** in the judgement. This is what the representative was called under the old Court of Protection Rules.

**COP 3 Mental Capacity Assessment**

This needs to be completed by the Social Worker:


It needs to cover the person’s ability to make decisions about their care and residence.

**Required Letter from a medical professional:**

- Confirming that the person has a diagnosis of unsoundness of mind.
- Ensure the letter is on the Dr's letter headed paper and is signed and dated.

**Best Interests decision:**

- For the person to reside in his/her current placement.

**Support plan:**

- This needs to be signed and dated on the front page and must give the address of the placement.

**COP24 Witness Statement:**

- Of the Social Worker that sets out their involvement with the person that you have identified someone to act as the rule 1.2 rep and why they are suitable, that they have been provided with a copy of the judgement in VE.

**COP24 Witness Statement:**

- From the Rule 1.2 Rep – they follow the guidance in the RE VE case.
- They must say that they do not require an oral hearing, if of course that is true. Failure to do so can lead to the matter being delayed as the court will ask us if that is what they want or the matter will simply be listed for a hearing which we want to avoid if not required.
- If there are no objections to the proposed care arrangements that amount to a deprivation of liberty then the matter should progress on the papers. Once the application has been issued the papers are then sent for judicial consideration at which point the court can either make further directions or the final order. If the court makes further directions these are usually received back fairly quickly from the court. The Final Order however can take some time.
- The Orders are generally **in place for a ‘review’ period of 12 months**.
The local authority and or the Rule 1.2 rep have a duty to bring this matter back to court if the care arrangements become more restrictive and/or it is deemed that they no longer meet the individual’s needs. In any event the local authority must make an application to the Court no less than one month before the expiry of the review period if at that time the care plan still applies to the individual.

The review application will effectively be the same documents as set out above however there may be some concession with the COP3 Mental Capacity Assessment if the individual has a diagnosis that is not going to change or has indeed not changed for some time. (This can be advised on at the time of a review application.)

The Rule 1.2 rep will have to provide a fresh COP24 witness statement every year. Again there is an application fee that is applicable.
COMMUNITY DOLS REFERRAL PROCESS

Provider’s identify COMM DOLS and complete referral form – Email to dols@telford.gov.uk

Social Worker’s identify COMM DOLS and complete COMM DOLS referral – Email to dols@telford.gov.uk

LAS contact created by DOLS BSO
Advanced Practitioner completed ADASS screening tool.

Case note identifying COMM DOLS referral created. Notification of HIGH priority individuals sent to Team Leader & Senior Social Worker added to legal gateway agenda by DoLS Advanced Practitioner Reassigned to DOLS work tray.

Team Leader links contact to allocated Social Worker with outcome of priority tool. Confirms MCA and BI completed to support application.

Team Leader attends Legal Gateway for COP

Following Legal Gateway COP Application authorised and documented on individuals record.
DoLS Advanced Practitioner requests DR’s assessment.

Further actions identified for Social Worker. LAS case note completed by Legal Gateway chair. Once completed Team Leader to refer back to legal gateway.

LAS case note updated by Legal Gateway chair. Social Worker notified to completed COP11 and COP3.

Team Leader to screen completed COP11 and COP3
And send completed application to legal services.
## Potential Community DEPRIVATION OF LIBERTY
Notification to Telford & Wrekin Council

To be sent to dolstelford.gov.uk

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<tr>
<th>Full name of person potentially being deprived of their liberty</th>
<th>Gender</th>
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<tr>
<td>Date of Birth <em>(or estimated age if unknown)</em></td>
<td>Est. Age</td>
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P v Cheshire West and Chester Council and P & Q v Surrey County Council – the Supreme Court judgement considered the ‘acid test’ to determine whether a deprivation of liberty is occurring.

Under this ruling
- P is not free to leave.
- P is under constant supervision
- P is under continuous control
- **AND LACK CAPACITY TO CONSENT TO LIVE AT CURRENT ADDRESS TO RECEIVE ASSESSED LEVEL OF SUPPORT**

Medical History *(including diagnosis of mental disorder and when diagnosed and by whom)*

NB cannot proceed if no recognised mental disorder).

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<th>Address and phone number where deprivation may be occurring</th>
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<th>Name &amp; Address of referrer</th>
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<th>Home address and phone number of the person if different from above</th>
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<th>Professionals (e.g. Social Worker, Support Planner, District Nurse, Care Agency, Shared Lives, Carers) involved in support of the person (add as many as are known)</th>
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| Name | Name | Name |
### How the care is funded

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<th>Local Authority</th>
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<td>Local Authority and NHS (jointly funded)</td>
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<td>Local Authority and NHS (jointly funded)</td>
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<td>Self-funded by person</td>
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**Why the person is thought to be deprived of their liberty - Why are they not free to leave – List any other restrictions in place**

**Are family / other advocate in agreement with current arrangement or do they have any objections? If yes what are they?**

- **What support or care is this person is receiving** e.g. number of hours per day, and whether that is 1-1, 2-1 etc. Please detail the type of care the person receives including personal care, mobility, medication, support with behavioural issues,
### Details of Family members, Friends or Advocates involved

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**Date when notification received by Telford Community Dols team (Safeguarding & Mental Capacity Team to complete)**

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